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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

L.A. EVENT CONNECTION, INC.,

Plaintiff and Appellant,

v.

STACY RIVAS,

Defendant and Respondent.

B233903

(Los Angeles County Super. Ct.
No. SC097524)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Segal, Judge. Affirmed.

The Beverly Hills Law Building and Mitchell Keiter for Plaintiff and Appellant.

Booth, Mitchel & Strange and Daniel M. Crowley for Defendant and Respondent.

The issue in this appeal is whether the trial court correctly ruled in connection with a special motion to strike filed under Code of Civil Procedure section 425.16 (the anti-SLAPP statute)¹ that there was insufficient evidence of malice to negate the common interest privilege in an action for defamation. We affirm.

Plaintiff and appellant L.A. Event Connection, Inc., (L.A. Event) appeals from the judgment entered in favor of defendant and respondent Stacy Rivas after the trial court granted Rivas's special motion to strike. L.A. Event first contends the trial court committed reversible error by sustaining evidentiary objections to portions of a deposition and witness declarations. Second, L.A. Event argues there was sufficient evidence of malice without the stricken deposition and declaration.

We hold the trial court correctly granted the special motion to strike. Rivas's statements were protected by the conditional common interest privilege of Civil Code section 47, subdivision (c), and evidence of malice was not presented. Because we conclude the common interest privilege applies and L.A. Event cannot show a probability of success due to the absence of malice, we need not discuss the merits of the challenges to the trial court's evidentiary rulings.

Allegations of the First Amended Complaint

L.A. Event, doing business as Freak Daddy Events and Ryan Chalme,² filed the operative first amended complaint for defamation based on the following allegations. Chalme had a party planning business that worked with fraternities and sororities at

¹ "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.) An order granting or denying a special motion to strike under Code of Civil Procedure section 425.16 is appealable. (Code Civ. Proc., § 904.1, subd. (a)(13).) All further statutory references are to the Code of Civil Procedure unless otherwise stated.

² Chalme and Freak Daddy are not parties to this appeal, which is brought only by L.A. Event.

UCLA and other universities. Without his knowledge, members of the Kappa Delta sorority at UCLA commonly altered service contracts provided by Chalme and forged his signature due to time constraints. Plaintiffs took no part in the forgeries, which were for the benefit of the sorority.

Rivas, an alumnae advisor, learned that Kappa Delta members Stefanie Garza, Julie Lam, Rachel “Doe,” and Alexandra Grossman were involved in the forgeries. Rivas diverted the blame for the forgeries to plaintiffs, even though she knew the sorority members were culpable. Lam, Doe, and Grossman were brought up on disciplinary charges (referred to as “Standards”) for forging documents. Most, if not all of the sorority members involved, informed Rivas that plaintiffs had nothing to do with the forgeries. Rivas knew Lam was forging signatures, plaintiffs denied any wrongdoing, and Chalme never forged any documents. An e-mail from Jackie Reed (another sorority advisor) to Rivas indicated Reed’s main goal was to get plaintiffs to shut down, and Reed suggested that she and Rivas get together over margaritas to plot. Rivas and Reed conspired to put plaintiffs out of business. They also conspired with Troy Bartels (the UCLA Greek advisor) and Amanda Adams, agents of the Regents of the University of California, to shut down plaintiffs’ business.

Bartels had a plan to train vendors, including plaintiffs, but Rivas opposed plaintiffs’ participation in the training. She suggested other sororities and fraternities ban plaintiffs, stating plaintiffs were under federal investigation, committing fraud, engaging in unethical business practices, and were shady characters. Rivas sent at least 12 e-mails to others, including Bartels and Adams, stating plaintiffs had forged contracts, utilized questionable business practices, were under federal investigation, and were “ripping people off.” Bartels wrote an e-mail that prohibited sororities from using Chalme, and he communicated with other universities, resulting in a nationwide ban on using plaintiffs’ services.

The allegations against plaintiffs are completely false, defamatory, and malicious. Based on these factual allegations, plaintiffs asserted causes of action for libel, libel per se, slander, and slander per se.

Rivas's Special Motion to Strike

Rivas filed her special motion to strike on the basis that plaintiffs' complaint arose from her constitutional right of free speech, and plaintiffs could not prevail in the action because it is barred by the common interest privilege of Civil Code section 47, subdivision (c). The motion was based on the following facts and arguments.

Rivas is an alumnae chapter advisor to Kappa Delta, one of 11 national sororities at UCLA, which also has 18 fraternities. Over 1,000 women participate in the UCLA sororities. Reed was the alumnae advisor to the Kappa Delta social chair.

The national Kappa Delta sorority has a lengthy set of Standards on the use of alcohol at social events, prohibiting service of alcohol to minors, service of hard liquor, and service to an obviously intoxicated individual. The Standards are to protect the sorority, the student population, and the community in which the local sorority is located. Kappa Delta funds may not be used to purchase alcohol, in order to limit consumption and protect Kappa Delta from liability.

Alane Hall was the regional director of 30-40 Kappa Delta chapters, including UCLA. On January 26, 2007, Hall sent an e-mail to Rivas stating that an officer of another sorority had advised Kappa Delta that an event planner known as Freak Daddy had required some sororities to pay a bar guarantee for events. Hall asked Rivas to investigate if Kappa Delta at UCLA had done business with Freak Daddy. After an inquiry, Rivas wrote back to Hall that the local chapter had done business with "Ryan," but the chapter drafted its own contracts which did not contain bar guarantees.

On March 1, 2007, social chair Lam informed Reed that Chalme had instructed the UCLA social chairs to forge vendors' signature on event contracts. Chalme had insisted on contracts with bar guarantees and instructed her to submit duplicate contracts to the chapter advisors without the bar guarantee language. Lam said Chalme had participated in signing the duplicate contracts. Reed immediately told Rivas. Reed spoke to Chalme,

who denied misconduct, but she was not persuaded by his statements, and she shared her belief with Rivas.

Concerned by Reed's report, Rivas concluded that Chalme had been circumventing the Kappa Delta alcohol policy and placing the sorority and its members in jeopardy. She ultimately recommended that the local Kappa Delta chapter no longer use plaintiffs' services. She also believed other sororities would be interested in what she had discovered. Rivas shared her findings with Bartels, informing him that Chalme told Kappa Delta members to sign two different versions of an invoice and give her the one without a bar guarantee. There was no other communication by Rivas about plaintiffs, and she never said that plaintiffs were under federal investigation or ripping people off.

Rivas argued there is no evidence she harbored malice toward plaintiffs. She had not met Chalme and made the statements to Bartels out of concern that sororities were being placed at risk. Her statements were made in connection with an issue of public interest, considering the size of the groups involved, the potential for tort liability, and the regulation of alcohol to minors. Plaintiffs could not sustain their burden of showing a prima facie case of likely success, as Rivas's statements were privileged under the common interest privilege of Civil Code section 47, subdivision (c). Plaintiffs could not overcome the privilege due to the absence of malice, which cannot be inferred from her statement itself under Civil Code section 48.

The motion was supported by the declarations of Rivas, Reed, Bartels, and copies of Kappa Delta's Risk Management Manual and pertinent e-mails.

Plaintiffs' Opposition to the Special Motion to Strike

Plaintiffs opposed the special motion to strike on multiple grounds. They argued Rivas's statements did not arise out of protected activity and were not in connection with an issue of public interest. In addition, plaintiffs argued they could demonstrate a probability of success. Rivas knew it was sorority members, and not Chalme, who were forging signatures on contracts, yet she accused Chalme and mischaracterized his conduct

to others. Plaintiffs argued the common privilege did not apply because Rivas acted with malice, in that she knew sorority members forged contracts, falsely accused plaintiffs of being under federal investigation, succeeded in putting plaintiffs out of business, and tried to cover up her own wrongful conduct.

The opposition to the special motion to strike was supported by declarations from Chalme, Chan, Grossman, Rivas, pertinent e-mails, and letters dated March 25, 2007, from Delta Gamma and Kappa Alpha fraternities.

Reply to the Opposition to the Special Motion to Strike

Rivas pointed out that Chalme was not a party to the action, as he had not appealed an earlier adverse judgment, and only L.A. Event remained as a plaintiff. The action arose from Rivas's exercise of her right to free speech in connection with a matter of public interest, and L.A. Event has not put forth admissible evidence establishing a reasonable probability of prevailing.

Rivas also objected to portions of the declarations of Chalme, Chan, and Grossman.

Ruling of the Trial Court

The trial court sustained objections to portions of Chan's deposition and declarations of Chan and Grossman, which were offered by L.A. Event in opposing the special motion to strike. Based on an earlier ruling in the case, the court ruled that Rivas's conduct arose from a matter of public interest. Noting that Rivas did challenge the assertion that the alleged statements were defamatory, the court turned to the issue of whether the statements were protected by the common interest privilege. While malice would negate the common interest privilege, the court ruled plaintiffs presented no evidence Rivas acted with malice. The special motion to strike the complaint was granted.

DISCUSSION

As noted at the outset, the primary issue in this appeal is whether L.A. Event presented sufficient evidence of malice to overcome the common interest privilege of Civil Code section 47, subdivision (c). We conclude it did not.

Standard of Review

Under section 425.16, subdivision (b)(1), “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” “An order denying an anti-SLAPP special motion to strike is appealable under sections 425.16, subdivision (i), and 904.1. We review the order de novo. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)” (*Chambers v. Miller* (2006) 140 Cal.App.4th 821, 824.)

Defamation and the Common Interest Privilege

“Defamation has two forms -- libel and slander. ([Civ. Code,] § 44.) Each is statutorily defined as ‘a false and *unprivileged* publication.’ ([*Id.*, §§ 45 [libel] and 46] [slander], italics added.)” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 723 (*Brown*), fn. omitted.)

“Civil Code section 47, subdivision (c) codifies the common law privilege of common interest, ‘which protected communications made in good faith on a subject in which the speaker and hearer shared an interest or duty. This privilege applied to a narrow range of private interests. The interest protected was private or pecuniary; the

relationship between the parties was close, e.g., a family, business, or organizational interest; and the request for information must have been in the course of the relationship.’ (*Brown*[, *supra*,] 48 Cal.3d [at p.] 727; see also *Lundquist v. Reusser* [(1994)] 7 Cal.4th 1193 [(*Lundquist*)].)” (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 914 (*Kashian*).)

“The common interest privilege is usually described as a qualified or conditional one, meaning it can be overcome by a showing of malice. But, ‘[t]his characterization is somewhat misleading. [Civil Code s]ection 47(3) [now § 47, subd. (c)] defines a privileged communication as one made without malice. Thus, if malice is shown, the privilege is not merely overcome; it never arises in the first instance.’ ([*Brown*], *supra*, 48 Cal.3d at p. 723, fn. 7.)” (*Kashian, supra*, 98 Cal.App.4th at p. 915.)

“Application of the privilege involves a two-step analysis. The defendant has the initial burden of showing the allegedly defamatory statement was made on a privileged occasion, whereupon the burden shifts to the plaintiff to show the defendant made the statement with malice. ([*Lundquist*,] *supra*, 7 Cal.4th 1193.) The existence of the privilege is ordinarily a question of law for the court. (*Institute of Athletic Motivation v. University of Illinois* [(1980)] 114 Cal.App.3d [1,] 13, fn. 5.)” (*Kashian, supra*, 98 Cal.App.4th at p. 915.)

“In the case of the common interest privilege, malice cannot be inferred from the communication itself. (Civ. Code, § 48.) Moreover, the malice necessary to defeat a qualified privilege is ‘actual malice.’ Such malice is established by a showing that the publication was motivated by hatred or ill will toward the plaintiff or by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff’s rights. (*Sanborn v. Chronicle Pub. Co.* (1976) 18 Cal.3d 406, 413.) However, the lack of reasonable grounds requires more than mere negligence. Malice is shown only when the negligence amounts to a reckless or wanton disregard for the truth, so as to imply a willful disregard for, or avoidance of, accuracy. (*Noel v. River Hills Wilsons, Inc.* [(2003)] 113 Cal.App.4th [1363,] 1370-1371.)” (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 740.)

Analysis

L.A. Event abandons the argument made in the trial court that Rivas's statements were not made in furtherance of an issue of public interest, removing any need to discuss the first step of analysis of an anti-SLAPP motion. Instead, L.A. Event argues it has established a probability of success at trial because it presented prima facie evidence that Rivas made the statements with malice, defeating the claim of the common interest privilege of Civil Code section 47, subdivision (c). Accordingly, we focus on the statements relied upon by L.A. Event to show that Rivas acted with malice.

1. Chan's Deposition Testimony

Citing to the trial court's description of Chan's deposition testimony, rather than to the actual testimony in the deposition, L.A. Event argues a portion of Chan's testimony was improperly ruled inadmissible and the excluded evidence is sufficient to establish malice. Rivas responds that L.A. Event made no attempt to cite to the relevant portion of the deposition transcript in its opposition to the anti-SLAPP motion, instead lodging the entirety of the transcript with the trial court. L.A. Event has taken the same approach on appeal—its opening brief does not cite to the relevant portion of the transcript.

Although not required to do so, we have conducted a de novo review of the entirety of Chan's deposition testimony. We conclude that Chan's deposition testimony contains no evidence that Rivas acted with actual malice. We therefore need not discuss whether the trial court's evidentiary ruling was correct.

According to her deposition testimony, Chan was chapter president of Kappa Delta at UCLA. During a meeting in 2007, she saw Lam engaged in a conversation with Rivas, who was Chan's advisor. Rivas appeared to be angry after the conversation, leaving abruptly. Chan preferred not to know what had been discussed between Lam and Rivas, but she assumed it had to do with Chalme because he had been the subject of a

previous conversation, and liability issues pertaining to social events was a matter of ongoing concern to the sorority.

Lam had her own advisor—Reed—and Chan thought Lam should be addressing the issue with Reed rather than Rivas. Within a week or two, Rivas told Chan what Lam had said regarding sorority contracts. Rivas said Lam had told her she was forging vendor contracts because she was pressed for time. *“Julie said that it was Ryan who told her to sign those forms of contracts. And she relayed that information to Stacy, who told me we should not use Ryan because of this.”* (Emphasis added.) Chan further testified, when asked about how the contract process worked, *“I don’t know, but Stacy Rivas told me Julie was directed by Ryan to sign the vendor contracts.”* (Emphasis added.) After a Standards board meeting, Chan learned that Lam had signed the contracts and “felt really bad about it.” Rivas also told her that she could not believe Chalme would do this, because the sorority continued to use him when other national sororities were prohibited from doing so. According to Chan, it was never determined whether Chalme had actually forced Lam to sign the agreements, “except for the statement by Julie.”

Rather than establishing malice on the part of Rivas, Chan’s deposition testimony demonstrates why Rivas reasonably believed that Chalme was involved in a scheme to forge contracts. Lam’s statement to Rivas established exactly that fact—Chalme told Lam to sign the bogus contracts. Chan testified that Rivas explained why Kappa Delta could no longer use L.A. Event—“I just remember Stacy saying we can’t use Ryan basically because of the forging—he directed one of our chapter members to forge documents.” Lam’s statements, and Rivas’s response, do not establish ill will, hatred, or an intent to annoy. Instead, Lam’s implication of Chalme in the scheme to forge contracts demonstrates that Rivas had an honest and legitimate basis for taking steps to protect the sorority in an area fraught with issues of liability.

2. Grossman Declaration, Paragraph 9

L.A. Event next argues the trial court committed prejudicial error in striking paragraph 9 of the declaration of Grossman, one of two social chairs of Kappa Delta. The paragraph reads as follows:

“During one occasion, Julie Lam told me to forge documents for a sorority event. She stated that if the documents were not forged, paperwork would not be turned into the sorority timely and the event would not take place. When I inquired why I had to do it, she said that she had done it too many times and was starting to feel it was morally wrong. Julie Lam never said Ryan instructed her to forge documents.”

Once again, we need not determine whether the trial court erred in sustaining evidentiary objections to paragraph 9, as the paragraph provides no proof of malice on the part of Rivas. Rivas was not a party to the discussion between Lam and Grossman, so their conversation has no bearing on what Rivas did or did not know about Chalme’s role, if any, in the forging of contracts. Moreover, Grossman’s statement that Lam did not indicate that Chalme instructed her to forge documents is of no moment. The absence of a statement about Chalme does not establish his lack of involvement, and in any event, Rivas could not have been influenced by a conversation she did not hear. The entire conversation, as relayed by Grossman, fails to demonstrate that Rivas acted out of anger, hatred, or an intent to annoy L.A. Event.

3. Additional Statements of Grossman

L.A. Event argues that the balance of the Grossman declaration establishes malice because it shows that Rivas knew sorority members, and not Chalme, were at fault for the forgeries. It argues Grossman’s declaration established the following: (1) Lam forged contracts, which was a common practice among earlier social chairs; (2) Chalme never told Grossman to forge documents; and (3) Grossman told Reed of Chalme’s innocence.

The three facts cited by L.A. Event do not establish that Rivas acted with malice. That Lam and predecessors in the position of social chair forged documents says nothing regarding whether Chalme had a role in the conduct. Similarly, Grossman's assertion that Chalme never asked her to forge documents does not establish that he acted in the same fashion with Lam. According to Grossman's declaration, "Lam was in charge of all paperwork." Finally, Grossman telling Reed that "Chalme took no part in the forging of any documents and was completely innocent" is no more than her conclusion, and more importantly, it did not preclude Reed and Rivas from reaching a contrary conclusion after an investigation into the forgeries. The fact that Grossman personally did not believe that Chalme was involved in document forgery does nothing to establish that Rivas acted out of ill will, hatred, or with the intent to injure Chalme. The fact remains that contracts were forged, and early on, Lam told Rivas that Chalme had a role in the forgeries.

4. E-mails Between Rivas and Reed

L.A. Event argues further evidence of malice is found in e-mails exchanged between Rivas and Reed. It relies on Reed's March 2, 2007 e-mail to Rivas stating, "I went to [Lam's] room and went through all of the contracts—it turns out they are also forging Ryan's signature." Rivas sent an e-mail on March 3, 2007, stating, "From what Jackie has gathered, it sounds like Julie knew that she was sending us a fake invoice and that Julie admitted to Allie (or Allie had her roommate) forge a signature on a contract." She further wrote, "Ask her to help us figure out who told her it was ok to do this, was it old social chairs, did anyone else know it was happening. . . ."

L.A. Event contends Reed's e-mail established that Rivas was aware it was the sorority members who were forging the contracts. It further argues Rivas's e-mail establishes her awareness of the sorority members' misconduct but provides no basis for a belief that Chalme engaged in forgeries.

These e-mails do not establish actual malice. The entirety of the Reed e-mail focuses on Reed and Rivas trying to sort out the problem within the sorority and

determine the appropriate discipline. Reed's e-mail begins with her lamenting the "very serious situation" and her wondering "how high up this goes?" She described her investigation and conversation with Lam, and how the sorority would move forward with a new party planner. Reed explained that she had a conference call with Bartels that afternoon, and her "main goal with talking to him is getting FreakDaddy shutdown [*sic*]" and seeking his advice "on how we should handle the internal issue." Reed concluded by asking if Rivas "had given it any thought" and suggested "we should get together for margaritas and plot."

Reed and Rivas had a responsibility to Kappa Delta as alumni advisors. Liability from social events was a significant concern to the local and national sorority. Reed's e-mail expresses the concern Reed had in sorting out the sorority's issues. Our de novo review leads to the conclusion the Reed e-mail provides no inference of malice by Rivas.

L.A. Event's reliance on Rivas's e-mail dated March 3, 2007, fares no better. Rivas begins by stating Lam, Rachel, and Grossman should all be brought up to Standards for forging documents. She stressed the sorority members' need to understand the gravity of their conduct and suggested they should be removed from office and possibly be subject to other discipline. She stated that it sounded like Lam knew she sent fake invoices and had Grossman sign one of the forged contracts, but it was unclear what Rachel knew. The balance of the e-mail reflects Rivas's suggestion to meet privately with the parties, questions whether Chan was involved, and asks Reed to have another conversation with Lam about past social chairs forging documents in order to determine the severity of the situation. Significantly, L.A. Event does not suggest that Rivas's e-mail contains a defamatory statement.

As Rivas's e-mail demonstrates, her motivation was to resolve issues within the sorority. Nothing in her e-mail, or that of Reed, established that Chalme had no role in the events, but more importantly, the e-mails do not demonstrate any ill will or hatred on her part. "Gross or even extreme negligence will not suffice to establish actual malice; the defendant must have made the statement with knowledge that the statement was false or with "actual doubt concerning the truth of the publication.'" (*Annette F. [v. Sharon S.*

(2004)] 119 Cal.App.4th [1146,] 1167.)” (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 88.)

5. Rivas’s False Statement to Chan That Chalme was Under Federal Investigation

Citing to its own opposition to the anti-SLAPP motion, rather than to Chan’s deposition testimony, L.A. Event argues malice is shown by Rivas’s false statement to Chan that Chalme was under federal investigation. It is argued that the trial court misconstrued Chan’s testimony to be that she heard Chalme was under investigation from Bartels, and the combination of conflicting statements by Rivas, Chan, and Bartels demonstrates malice.

During her deposition, Chan was questioned regarding paragraph 8 of her declaration, which reads as follows: “When this forgery was brought to the attention of Troy Bartels, Mr. Bartels informed my advisors that Mr. Chalme was under federal investigation.” Thus, the plain meaning of this portion of Chan’s declaration was that Bartels was the person who said Chalme was under federal investigation.

Chan further declared: in an e-mail in March 2007, Bartels wrote “that Mr. Chalme and Freak Daddy Events were under ‘federal investigation’”; and “Bartels stated that Ryan Chalme cannot be trusted, [is] under federal investigation, is ‘ripping people off’ and overcharging, and cannot be used because insurance will not cover his services.” Chan’s declaration plainly deemed Bartels the source of information that Chalme was under federal investigation.

Follow-up questioning of Chan regarding paragraph 8 of her declaration took place at her deposition. Chan testified that it was her advisors who told her that Chalme was under federal investigation. Chan was not privy to any conversations between Rivas and Bartels, “other than what [Rivas] told me.” Chan was asked, “[i]f Mr. Bartels said he was under federal investigation, you never heard him say that. You only heard Ms. Reavis [*sic*] say that?” Chan answered, “Yes.” Chan again testified she did not hear Bartels say Chalme was under investigation, but she reiterated the source was Bartels or a

national sorority organization with authority to send out a mass e-mail. The information could have come from an “authoritative figure” and been forwarded to Bartels.

We have serious doubts that Chan’s response to a compound and ambiguous question established that Rivas was an original source of a statement that Chalme was under federal investigation, particularly since Rivas was not present to object, but the issue can easily be resolved on other grounds. Viewed in the light most favorable to L.A. Event, Chan’s deposition testimony at most established that Rivas made the statement that Chalme was under federal investigation. However, malice cannot be proved by the statement itself under Civil Code section 48, and Chan provided no testimony that Rivas acted out of ill will, hatred, or an intent to injure Chalme. L.A. Event presented no evidence that if Rivas said Chalme was under federal investigation, she did so for any purpose other than protecting the common interest of Kappa Delta and other Greek organizations. Rivas’s statement at that time was protected by the common interest privilege and, in the absence of malice, serves as a complete defense.

L.A. Event’s contention that malice is shown by the conflicts in various versions of events offered by Chan, Bartels, and Rivas is without merit. None of these three witnesses individually provided any proof that Rivas acted with actual malice. The sum of their collective statements does not equal more than its individual components.

6. Exclusion of Portions of Chan’s Declaration

L.A. Event argues the trial court erred in striking portions of Chan’s declaration in which she stated: (1) there were instances in which sorority members forged signature on vendor contracts, and (2) Bartels wrote in an e-mail that Chalme was under federal investigation. We have considered the full content of Chan’s declaration in our determination of the merits of the anti-SLAPP motion, without regard to the evidentiary exclusions, and therefore need not further address the evidentiary issues.

7. Malice by Retroactive Amendment to the March 2, 2007 E-mail and Rivas's Motive to Defame

a. Retroactive Amendment

L.A. Event argues that malice may be inferred from Rivas's 2009 and 2011 declarations which portray Chalme's role in the forgeries, as contrasted to Reed's March 2, 2007 e-mail, which did not implicate Chalme. Describing Rivas's declarations as "backdating," L.A. Event argues Rivas's embellishment of events in her 2009 and 2011 declarations so as to implicate Chalme in the forgeries evidences malice on her part.

L.A. Event constructs its argument as follows. Reed's 2007 e-mail to Rivas stated it was the Kappa Delta members who were forging Chalme's signature on contracts. The e-mail was silent regarding wrongdoing by Chalme. Rivas filed declarations in 2009 and 2011, which according to L.A. Event, stated that "Ms. Reed informed me . . . in an e-mail the following day that Ms. Lam had informed her that Mr. Chalme had insisted on Social Chairs signing contracts containing bar guarantees, and had instructed them to submit duplicate contracts to their Chapter Advisors not containing the bar guarantee language. Ms. Lam said that Mr. Chalme not only instructed the Social Chairs to forge vendors' and his signatures on these contracts and duplicate contracts, but that he also participated in signing those contracts himself."

As pointed out by Rivas, L.A. Event has altered the content of Rivas's declarations by employing an ellipsis to delete relevant language. L.A. Event makes it appear that Rivas's statement implicating Chalme was based only on Reed's e-mail, which does not identify Chalme as a forger. In reality, the beginning of the portion of Rivas's declaration quoted by L.A. Event is as follows: "Ms. Reed informed me *verbally that night and* in an e-mail the following day. . . ." (Emphasis added.)

The full statement in Rivas's declaration clearly indicates she was not relying merely on Reed's March 2007 e-mail. Rivas stated she received information from Reed "verbally that night and in an e-mail the following day." We give no credence to an

argument based on an inaccurate statement of the record on appeal. In any event, nothing in Reed's e-mail or Rivas's declarations shows that she acted with actual malice.

b. Motive to Discredit L.A. Event

L.A. Event next contends malice is established by Rivas's motive to discredit the corporation, the double standard employed against L.A. Event resulting in discriminatory treatment in favor of another vendor, and the pretext of complaints against L.A. Event. The contentions are not supported by citation to the record demonstrating the same arguments were made below. Rivas argues these contentions were not made in the trial court and may not be considered for the first time on appeal. L.A. Event filed a reply brief but did not respond to Rivas's forfeiture argument.

We have examined L.A. Event's opposition to the special motion to strike filed in the trial court and cannot locate an argument corresponding to its contention that Rivas had a motive to discredit that demonstrates malice. “‘The rule is well settled that the theory upon which a case is tried must be adhered to on appeal. A party is not permitted to change his position and adopt a new and different theory on appeal. To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant.’ (*Ernst v. Searle* (1933) 218 Cal. 233, 240–241; see also *JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 404, p. 455.)” (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350.)

The contentions are forfeited.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Stacy Rivas.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.